

# CCRB CASE CLOSING FORM

Investigator assigned: Sullivan		Team: 8	CCRB#: 9701476	FADO: F, D, A
Date of incident: 04-22-97	Time of incident: 2:00 pm	Location of incident: § 87(2)(b)	Pct. occurred: 044	Expires: 10-22-98
Date reported: 04-25-97	Time reported: 10:07 am	To whom/where/how reported: Complaint Made by Phone		
Complainant: § 87(2)(b)	Home address: § 87(2)(b) Bronx, NY 10451			
Victim(s): Same				
Witness(es): None				
Subject officer(s) (include rank): Sgt. James McCarthy Dt. Michael Horan	Shield: 3511 3091	Tax: 885671 887333	Command: BxNND BxNND	
Witness officer(s) (include rank): Dt. Michael O'Donnell Dt. Thomas Crowe Dt. John Trapani Lt. Brian Nicholson Dt. Charleston Byam	3529 2322 2920 N/A 437	887951 888153 891122 864144 897109	BxNND BxNND - MCIU BxNND BxSND BxNND	
Allegation(s) by letter:			Recommendation(s)	
A Excessive Force: Dt. Horan hit § 87(2)(b) in the face with his radio B Excessive Force: Dt. Horan pointed his gun at Mr. § 87(2)(b) C Discourtesy: Dt. Horan cursed at Mr. § 87(2)(b) D Abuse of Authority: Dt. Horan refused to give Mr. § 87(2)(b) his badge number E Abuse of Authority: Sgt. McCarthy threatened to arrest Mr. § 87(2)(b)			Substantiated § 87(2)(g)	

## Summary

On April 22, 1997, at approximately 12:30 pm, § 87(2)(b) delivered ½ a pound of cocaine to § 87(2)(b). A Ghost, Dt. Byam, was stationed nearby to watch the apartment door. Another group of officers were stationed outside of the building in unmarked cars. Sgt. McCarthy, Lt. Nicholson, Dt. Trapani, Dt. Crowe, and Dt.

O'Donnell were among these officers.

Some time after the delivery was made, the two men who had accepted the package left the apartment and headed for the stairs. Dt. Byam put a description of these two male Hispanics over the radio and then followed them out of the building. The two men were immediately apprehended by two or three members of the Narcotics team.

Dt. Horan, was also a member of this Narcotics team. He was stationed in the stairwell on the § 87(2)(b) floor directly below § 87(2)(b) and dressed as a Federal Express employee. After Dt. Byam left the building, Dt. Horan continued to monitor the door to the apartment. He wanted to be sure that no one left the building without being noticed.

Dt. Horan had heard several descriptions over the radio. He claims that a dark-skinned male wearing green clothing was mentioned. While the other officers were still downstairs, Dt. Horan saw and chose to detain a Black male wearing green clothing. This Black male, § 87(2)(b) had just returned from a business meeting and was walking up the stairs towards his § 87(2)(b) § 87(2)(b)

Mr. § 87(2)(b) claims that he was approached by Dt. Horan while he was in the process of opening his door. Dt. Horan claims that he and Mr. § 87(2)(b) were still in the stairwell just below the fifth floor. In any case, Dt. Horan approached Mr. § 87(2)(b) and said, "Come here." Mr. § 87(2)(b) claims that he pivoted, mistook Dt. Horan for a janitor and turned back towards his apartment. Dt. Horan claims that he realized his plain clothes might be misleading and decided to identify himself. He claims that he pulled out his badge and said, "I would like you to stay here a few minutes until we figure things out." Dt. Horan claims that Mr. § 87(2)(b) ignored him and continued to walk up the stairs. Mr. § 87(2)(b) claims that Dt. Horan never identified himself. In any case, Dt. Horan grabbed Mr. § 87(2)(b) from behind. Dt. Horan claims that Mr. § 87(2)(b) pushed him away and ran; that he grabbed him again, struggled with him briefly and then placed him in handcuffs. Mr. § 87(2)(b) claims that he was grabbed once, spun around and hit in the right side of his face with a radio. Mr. § 87(2)(b) also claims that Dt. Horan pointed a gun at his chest, and told him to "get the fuck on the floor". Mr. § 87(2)(b) claims that he thought he was being robbed and consequently refused to cooperate. According to Mr. § 87(2)(b) two more men then approached and told him to put his hands behind his back. At this point, Mr. § 87(2)(b) realized that he was dealing with police officers and was compliant. After Mr. § 87(2)(b) was placed in handcuffs, he was taken to § 87(2)(b)

Dt. Byam claims that he went back into the building and encountered Dt. Horan and Mr. § 87(2)(b) near the § 87(2)(b) floor as he was climbing the stairs. Mr. § 87(2)(b) did not seem to believe that Dt. Horan was an officer, but once Dt. Byam arrived Mr. § 87(2)(b) was cooperative. Dt. Byam claims that he did not see Mr. § 87(2)(b) and Dt. Horan come into physical contact. Both officers escorted Mr. § 87(2)(b) upstairs to § 87(2)(b). Dt. Byam did not know why Mr. § 87(2)(b) had been detained. Dt. Byam left the building a few minutes later.

While Dt. Byam and Dt. Horan were on the stairs with Mr. § 87(2)(b) other members of the Narcotics team entered § 87(2)(b) and began executing a search warrant. Sgt. McCarthy, Lt. Nicholson, Dt. O'Donnell, Dt. Trapani were among the officers conducting the search. Dt. Trapani recalled passing Dt. Horan and Mr. § 87(2)(b) on his way up the stairs.

Once Mr. § 87(2)(b) was brought into the apartment, he was placed on the couch. His information was taken, background checks were done, he was released and his arrest was voided. After re-entering the hallway, Mr. § 87(2)(b) claims that he asked Dt. Horan for his badge number. Dt. Horan disappeared and returned saying that he couldn't find a pen. Mr. § 87(2)(b) told Dt.

Horan to simply state his name and badge number, but he refused. Mr. § 87(2)(b) repeated his request numerous times. Sgt. McCarthy, who was also present, discouraged Dt. Horan from giving his name and badge number. When Mr. § 87(2)(b) continued to argue, Sgt. McCarthy said, "In three seconds, I'm going to arrest you."

Dt. Horan and Sgt. McCarthy claim that Mr. § 87(2)(b) was extremely upset. The officers tried to provide explanations, but Mr. § 87(2)(b) remained hostile. Dt. Horan claims that Mr. § 87(2)(b) threatened to sue him. Dt. Horan also claims that he gave his name and badge number to Mr. § 87(2)(b) numerous times. Sgt. McCarthy supported this claim. Both officers say that Mr. § 87(2)(b) insisted on having the name and badge number written down on a piece of paper for him. Dt. Horan claims that he could not find a pen. Sgt. McCarthy claims that instructed Dt. Horan to leave the building and then continued his discussion with Mr. § 87(2)(b). Mr. § 87(2)(b) kept saying: "Who the fuck are you guys? You come up here and grab me for no reason." When Sgt. McCarthy felt he had provided a sufficient explanation, he left and continued with the search.

Dt. Horan denied the allegations. When asked if he threatened to arrest Mr. § 87(2)(b), Sgt. Murphy said, "No, I don't think so." None of the officers noticed any injuries on Mr. § 87(2)(b). Later that day, Mr. § 87(2)(b) went to § 87(2)(b) Hospital and was treated for his injuries.

#### Analysis

Mr. § 87(2)(b) alleges that Dt. Horan hit him the right side of the face with his radio (Allegation A). Mr. § 87(2)(b) was not able to provide any names or badge numbers, but he gave accurate descriptions of the officers and their apparent objectives. For example, he didn't know Sgt. McCarthy's name, but the description was precise. He didn't know exactly why the officers were there, but he guessed that they were detectives with a search warrant. His statement was also coherent and logical. Furthermore, many details of his account found support in the statements provided by the witness officers. § 87(2)(g)

Mr. § 87(2)(b) gave precise estimations of the number of officers present and precise descriptions of the quality of his exchanges with these officers. Mr. § 87(2)(b) also has medical documentation from the day of the incident to confirm his injury claims. X-rays were taken and painkillers were prescribed. Mr. § 87(2)(b) did not wait for his x-rays to be read, but it was subsequently determined that his right zygomatic arch (cheekbone) was fractured (see enc. 19g). Swelling and tenderness were also noted on the medical records (see enc. 19e). § 87(2)(g)

Dt. Horan's § 87(2)(g) He claims that Mr. § 87(2)(b) fit a description of a dark-skinned male wearing green clothing given by the Postal Inspector. Sgt. McCarthy supports the claim about the nature of the description, but after deliberating he said that the description was given by Dt. Byam, a ghost. Dt. Byam, who witnessed the entire transaction, claims that he offered descriptions of two male Hispanics and nothing more. He never heard the Postal Inspector provide any descriptions, he never saw a male Black and he doesn't remember anything about green clothing. This seems strange because Sgt. McCarthy claims he and Dt. Byam discussed the male Black in green clothing over the radio. Dt. Trapani could not remember what, if any, descriptions he heard. Dt. Crowe also mentioned hearing a description of a dark-skinned male wearing green clothing. Lt. Nicholson only heard a description of two male Hispanics from Dt. Byam. He heard nothing about green clothing or a dark-skinned male. § 87(2)(g)

§ 87(2)(g) the Postal Inspector was not available for an interview (see enc. 26).

§ 87(2)(g)

§ 87(2)(g)

Dt. Horan also denied the presence of other officers. Yet, Dt. Byam, § 87(2)(g) insisted that he was there for a portion of the incident. Dt. Byam claims that he encountered Dt. Horan and Mr. § 87(2)(b) on his way up the stairs. Dt. Byam also claims that he helped apply the handcuffs and that Mr. § 87(2)(b) was physically cooperative. § 87(2)(g)

§ 87(2)(g)

Mr. § 87(2)(b) also claims that Dt. Horan pointed a gun at his chest (Allegation B). Mr. § 87(2)(b) described Dt. Horan's weapon accurately. He said it was a black 9 mm semi-automatic pistol. This information was confirmed by Dt. Horan. He carries a black Glock; a 9mm semi-automatic pistol (see enc. 26). § 87(2)(b), § 87(2)(g)

Mr. § 87(2)(b) claims that Dt. Horan said, "Get the fuck on the floor" (Allegation C). Dt. Horan denied the allegation, § 87(2)(g)

Mr. § 87(2)(b) alleges that Dt. Horan refused to give his badge number (Allegation D). Dt. Horan claims that he stated his name and badge number for Mr. § 87(2)(b) repeatedly. Dt. Horan suggests that Mr. § 87(2)(b) was simply angry because the name and badge number were not written down for him on a piece of paper. Sgt. McCarthy confirmed Dt. Horan's statement and emphasized the fact that the name and badge number were repeated for Mr. § 87(2)(b) numerous times. Mr. § 87(2)(b) did, in fact, seem very concerned with the fact that the name and badge number were not written down for him. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Mr. § 87(2)(b) alleges that Sgt. McCarthy threatened to arrest him (Allegation E). Sgt. McCarthy offered a tentative denial of the allegation. There were no witnesses. § 87(2)(g)

Investigator: Sullivan

Date: 8-7-97

Supervisor: RJ Linkowski

Date: 8-11-97

Reviewed by: \_\_\_\_\_

Date: \_\_\_\_\_

Reviewed by: \_\_\_\_\_

Date: \_\_\_\_\_